

REMARKS

Claims 7-17 are pending in the above-identified application. In the Final Office Action of September 10, 2008, these claims were rejected under 35 USC 103(a) as being unpatentable over Asrar '371 (US 2003/0060371). Asrar '371 generally discloses a wide range of possible combinations of fungicides and herbicides without specifically recognizing the preferred combination of (a) pyraclostrobin and (b) glyphosate, as recited in presently pending claims 15-17.

Request for Personal Interview with Examiner

Applicant's representative respectfully requests a personal Interview with the Patent Examiner handling this application in order to specifically discuss the patentability issues and comparative test evidence in the present record, as these points relate to presently pending claims 7-17, especially claims 15-17. Applicant's representative will contact the Examiner within one month of the filing of this Submission and Request for Continued Examination (RCE) in order to attempt to arrange the personal Interview.

Asrar '371 discloses a method for improving the yield and vigor of an agronomic plant, such as soybeans, by treating the plants and/or their propagation material with a composition that comprises an active agent, such as a diazole fungicide, a triazole fungicide or a strobilurin-type fungicide (see abstract and paragraph [0013]). The method can be carried out by seed treatment or, after the plants have sprouted, by foliar applications. In the latter case, the active agent can also be combined, if desired, with other agents, such as herbicides. If the supplementary active agent is an herbicide, it is preferred that the plant be a transgenic plant having a transgenic event that provides resistance to the particular herbicide used. The aim of this combination is said to be "to obtain further beneficial results" (see paragraph [0028]). The Asrar '371 document is silent about what is meant by these "further" beneficial results. Thus, a skilled person must deduce that this combination is only intended to combine two different, independent positive features, namely the improvement of the vigor/yield by the fungicide plus a protection of the

plant against unwanted weeds by the herbicide. There is not the slightest hint regarding the combined action of a fungicide and a herbicide to increase crop yield.

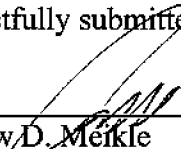
In contrast, the claimed subject matter of the present invention is directed to a method for increasing the yield in glyphosate-resistant legumes, which includes treating the plants with a synergistic mixture comprising a strobilurin Ia and a glyphosate derivative II. In other words, the glyphosate derivative II is used as a synergist for the strobilurin fungicide Ia and thus serves a completely different purpose than in the Asrar '371 reference. Asrar '371 fails to recognize the synergistically and advantageously improved crop yield achieved by the present invention as evidenced by the comparative test results described at pages 14-15 of the present specification. Consequently, significant patentable distinctions exist over Asrar '371. Even if prima facie obviousness is assumed to have been properly alleged, such obviousness has been rebutted by the evidence of unexpected, advantageous properties shown by the comparative test results. Thus, it is requested that the above rejection be withdrawn.

If any questions arise in the above matters, please contact Applicant's representative, Andrew D. Meikle (Reg. No. 32,868), in the Washington Metropolitan Area at the phone number listed below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

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Respectfully submitted,

By 

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